



UNITED STATES DEPARTMENT OF COMMERCE
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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER

ST. CLAIR, G

ART UNIT

PAPER NUMBER

10

DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined Responsive to communication filed on July 27 1994 This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892.
2. Notice of Draftsman's Patent Drawing Review, PTO-948.
3. Notice of Art Cited by Applicant, PTO-1449.
4. Notice of Informal Patent Application, PTO-152.
5. Information on How to Effect Drawing Changes, PTO-1474.
6.

Part II SUMMARY OF ACTION

1. Claims 1 to 64 are pending in the application.
Of the above, claims 7, 9-14, 20, 22-27, 29-50, 55-61 and 63 are withdrawn from consideration.
2. Claims _____ have been cancelled.
3. Claims _____ are allowed.
4. Claims 1-6, 8, 15-19, 21, 28, 51-54, 56-60, 62 and 64 are rejected.
5. Claims _____ are objected to.
6. Claims _____ are subject to restriction or election requirement.
7. This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. Formal drawings are required in response to this Office action.
9. The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are acceptable; not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. The proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been approved by the examiner; disapproved by the examiner (see explanation).
11. The proposed drawing correction, filed _____, has been approved; disapproved (see explanation).
12. Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has been received not been received been filed in parent application, serial no. _____; filed on _____.
13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. Other

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Part III DETAILED ACTION

Drawings

1. The corrected or substitute drawings have been received on July 27, 1994. These drawings are approved.

2. INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 C.F.R. § 1.85; 1097 OG 36

IN APPLICATIONS FILED **BEFORE** JANUARY 1, 1989 OPTION (a) OR (b) MAY BE USED IN ORDER TO CORRECT ANY INFORMALITY IN THE DRAWING.

IN APPLICATIONS FILED **AFTER** JANUARY 1, 1989 ONLY OPTION (a) **MAY BE USED**.

AFTER JANUARY 1, 1991 ONLY OPTION (a) MAY BE USED REGARDLESS OF FILING DATE.

(a) File new drawings with the changes incorporated therein. The art unit number, serial number and number of drawing sheets should be written on the reverse side of the drawings. Applicant may delay filing of the new drawings until receipt of the "Notice of Allowability" (PTOL-37). If delayed, the new drawing **MUST** be filed within the **THREE MONTH** shortened statutory period set for response in the "Notice of Allowability" (PTOL-37). Extensions of time may be obtained under the provisions of 37 C.F.R. § 1.136(a). The drawing should be filed as a separate paper with a transmittal letter addressed to the Official Draftsman.

(b) Request a commercial bonded drafting firm to make the necessary corrections. A bonded draftsman must be authorized, the corrections executed and the corrected drawings returned to the Office during the THREE MONTH shortened statutory period set for response in the "Notice of Allowability" (PTOL-37). Extensions of time may be obtained under the provisions of 37 C.F.R. § 1.136(a).

Timing of Corrections

Applicant is required to submit acceptable corrected drawings within the three month shortened statutory period set in the "Notice of Allowability" (PTOL-37). Within that three month period, two weeks should be allowed for review

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by the Office of the correction. If a correction is determined to be unacceptable by the Office, applicant must arrange to have an acceptable correction re-submitted within the original three month period to avoid the necessity of obtaining an extension of time and of paying the extension fee. Therefore, applicant should file corrected drawings as soon as possible.

Failure to take corrective action within the set (or extended) period will result in **ABANDONMENT** of the application.

2. Corrections other than Informalities Noted by Draftsman on the PTO-948.

All changes to the drawings, other than informalities noted by the Draftsman, **MUST** be made in the same manner as above except that, normally, a red ink sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

Specification

3. The specification is objected to as failing to provide clear support for the claim terminology. 37 CFR § 1.75(d)(1) requires that terms and phrases used in the claims find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description. Specifically, the term "second masses" does not appear in the specification.

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4. Claims 1 to 6, 8, 15 to 19, 21, 28, 51 to 54, 56 to 60, 62 and 64 are rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

This is a new matter rejection.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 to 6, 8, 15 to 19, 21, 28, 51 to 54, 56 to 60, 62 and 64 are rejected under 35 U.S.C. § 102(b) as being anticipated by Lorenz (DT 3516852.)

7. Lorenz discloses a co-extrusion process wherein "multi-colored and multi-taste pastes, especially chewing gum" are extruded into various designs as seen in Figure 7.

8. It is considered that Lorenz discloses a chewing gum wherein the second masses which are located on one side of the gum's first mass will not be visible from the other side of the said first mass and thereby meets the limitations of the product claims. While the gum of Lorenz is produced by an extrusion process it is considered inherent that the product is indistinguishable from applicant's product, wherein one of

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ordinary skill in the art would be unable to differentiate the product of Lorenz from the instant product.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

10. Claims 1 to 6, 8, 15 to 19, 21, 28, 51 to 54, 56 to 60, 62 and 64 are rejected under 35 U.S.C. § 103 as obvious over Cherukuri et al. (US Patent 4,971,806) in view of Lorenz .

11. Cherukuri et al. disclose that which was cited in the last Office Action. While it broadly discloses a multitude of possible designs to be formed by the laminating or co-extruding gum layers it does not specifically show the embedding of a gum mass in just the upper surface of a gum layer.

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12. Cherukuri does not specifically teach the co-laminating of different masses together so that the when viewing the final product the second masses would be hidden from the bottom.

13. Lorenz discloses a co-extrusion process wherein the final product has second masses embedded into a first mass and the individual second masses are not visible from the bottom.

Further it would be obvious to produce a gum where the second masses are extruded on just one side of the gum's first mass.

14. It would have been obvious to one of ordinary skill in the art to modify the lamination process of Cherukuri et al. to obtain the multi-colored and multi-taste patterns of Lorenz since to produce a attractive looking and tasty chewing.

15. While Lorenz does not show in Figure 7 a chewing gum pattern where a second mass of gum is exposed on only the top surface of a first mass of chewing gum it is considered that nothing patentable is contained in this claim limitation. It is considered that applicants' instant invention is the embedding of a plurality of individual layers of gum within a larger main layer of gum where the individual layers are surrounded on all surfaces except its top surface. From Figure 7 of Lorenz there is shown several designs where this is accomplished.

16. While Lorenz does not show diagonal stripes traversing the larger main layer of gum it is considered that the design of diagonal stripes is well known in the art (e.g., BEECHNUT® Gum)

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and to adapt this design to the process of Cherukuri et al. would be merely substituting one design for another.

Response to Amendment

17. Applicant's arguments with respect to Claims s 1 to 6, 8, 15 to 19, 21, 28, 51 to 54, 56 to 60, 62 and 64 have been considered but are deemed to be moot in view of the new grounds of rejection.

Conclusion

18. No claim is allowed.

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

20. Huston (U.S. Patent No. 1,414,022) shows a food product wherein a pattern is formed on a sheet by extruding a food material upon the sheet in the form of ribbons as seen in the Figure.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Monday through Friday from 8:00 to 4:30.

22. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Czaja, can be

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reached on (703)-308-3852. The fax phone number for this Group is (703)-305-3601.

23. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.



Curt Sherrer

October 14, 1994



DONALD E. CZAJA
SUPERVISORY PATENT EXAMINER
GROUP 130